



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** H.J. Group Ventures, Inc.

**File:** B-246139

**Date:** February 19, 1992

Harry J. Perez for the protester,  
Laurie S. Stiteler, Esq., Department of the Air Force, for  
the agency,  
John Formica, Esq., and James A. Spangenberg, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Agency acted improperly in awarding a contract to an offeror under a request for proposals (RFP) for the simplified acquisition of base engineering requirements, where the award was based on "performance risk," which was said to be a "general consideration," whose relative importance was not disclosed vis-a-vis the evaluation factors specifically identified and listed in the RFP in descending order of importance, and where the awardee's proposal under the stated and weighted evaluation criteria was technically equal to but higher in price than the protester's proposal.

### DECISION

H.J. Group Ventures, Inc. (HJ)<sup>1</sup> protests the award of a contract to Beneco Enterprises, Inc. under request for proposals (RFP) No. F41650-91-D-3008, issued by the Department of the Air Force as a total small disadvantaged business (SDB) set-aside for the simplified acquisition of base engineering requirements (SABER) at Kelly Air Force

<sup>1</sup>HJ submitted a proposal as a joint venturer with Alpha Building Corporation. The joint venture is called Calaveras Constructors. Accordingly, the joint venture--not HJ itself--is the interested party with standing to protest the Air Force actions. Robert R. Nathan Assocs., Inc., B-230707, June 28, 1988, 88-1 CPD ¶ 615. While the Air Force argues that we should dismiss the protest, it is apparent that HJ is acting as an authorized agent of the joint venture and thus is eligible to file this protest on behalf of Calaveras. The references to HJ in this decision are references to the joint venture. Id.

Base, Texas.<sup>2</sup> HJ contends that the award to Beneco was not consistent with the RFP's stated evaluation criteria.<sup>3</sup>

We sustain the protest.

The RFP, issued May 15, 1991, as a total SDB set-aside, contemplated the award of a firm, fixed-price, indefinite quantity contract for a 1-year base period and four 1-year options. Offerors were required to submit a technical proposal, a cost/price proposal, and a past performance proposal. The offerors' past performance proposals were to disclose and discuss the offerors' relevant contracts.

Offerors were informed that the evaluation of proposals would be conducted under the streamlined source-selection procedures of Air Force Regulation (AFR) 70-30, and that award would be made to the responsible offeror whose offer, conforming to the solicitation, represented the best value to the government. The RFP reserved the right of the government to make award to other than the low cost offeror. The solicitation stated that the source selection would include an integrated assessment of each offeror's ability to satisfy the requirements of the solicitation, consisting of an evaluation of both general considerations, such as past performance, proposed contractual terms and conditions, and pre-award survey results, and the evaluation of technical and price proposals. The RFP further provided:

"Each offeror's proposal will be evaluated against the following areas listed in descending order of importance; factors within the areas are of equal importance:

- a. Project Management
  - (1) Organization
  - (2) Management Supervisor Experience
  - (3) Quality Control Plan
  - (4) Financial Resources
  - (5) Technical and Support Staff

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<sup>2</sup>The SABER program provides for small-to-medium size maintenance and repair and minor construction projects in support of base civil engineers.

<sup>3</sup>HJ also contends that Beneco is not a SDB and is thus ineligible for award under this solicitation. The Small Business Administration, which has the authority to conclusively determine a firm's eligibility for SDB set-asides, 13 C.F.R. §§ 126.601 et seq. (1991); J. Morris & Assocs., Inc., B-244647, July 22, 1991, 91-2 CPD ¶ 81, has determined that Beneco does qualify as an SDB concern for this solicitation.

- b. Subcontract Management
  - (1) Subcontract Management
  - (2) Identification of Key Subcontractors
- c. Company Experience
  - (1) Multiple Project Experience
  - (2) Multiple Discipline Experience
- d. Cost/Price."

The RFP stated that each specific evaluation factor, except cost/price, would receive a color rating, depicting how well the offerors' proposals met the evaluation standards, and a proposal risk rating, assessing the risks associated with the offerors' proposed efforts to accomplish the RFP requirements.<sup>4</sup>

After setting forth the foregoing weighted technical and cost/price factors, the RFP stated that "[i]n addition, the [g]overnment will conduct a performance risk analysis, based on the offeror's present and past performance as it relates to the probability of successfully accomplishing the proposed effort." The RFP, however, did not indicate the relative importance of the performance risk assessment, but stated "[p]erformance risk is a structured treatment of past performance used as a general consideration." There was no indication in the solicitation concerning the relationship between "company experience" as a technical evaluation

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<sup>4</sup>Proposals were evaluated as being either "blue/exceptional," which was defined as exceeding the specified performance with a high probability of success and no significant weaknesses; "green/acceptable," which was defined as meeting the specified performance standards with good probability of success and no significant weaknesses; "yellow/marginal," which was defined as failing to meet the performance standards but with deficiencies that were correctable without a major rewrite; or "red/unacceptable," which was defined as where a proposal failed to meet specified performance standards or where correction of the deficiencies would require a major rewrite. Proposal risk assessments were defined according to the potential risk of disruption of schedule, increase in cost, or degradation of performance. "High" risk was defined as being "likely" to cause "significant serious risk." "Moderate" risk was defined as "potentially" causing "some" risk. "Low" risk was defined as having "little potential" for causing risk.

factor, which evidently is intended as some measure of future performance, i.e., performance risk, and the unweighted performance risk assessment.

The Air Force received nine proposals by the RFP's May 15, 1991, closing date. Seven proposals were included in the competitive range. The proposals were evaluated by the source selection evaluation team (SSET) in accordance with the color rating and proposal risk assessment scheme stated in AFR 70-30. Best and final offers were requested and evaluated, with the SSET finding Beneco and HJ "equal in technical acumen," and rating both of their technical proposals as "blue" with "low" proposal risk. The record confirms that in all technical evaluation areas both Beneco and HJ received exceptional ratings with low proposal risk and were considered to be technically equal under the weighted technical evaluation criteria. HJ's evaluated price was lower than Beneco's evaluated price.

The performance risk assessment was conducted by a performance risk analysis group (PRAG). The PRAG concluded, as the result of its assessment of the offerors' past performance, that HJ had a "moderate" performance risk, while Beneco had a "low" performance risk. HJ's "moderate" risk rating was based on its organization as a joint venture, which had no previous contract experience, some reports of inadequate construction management personnel on a contract of one joint venture partner and no relevant contract experience for the other partner.<sup>5</sup>

The record shows that the source selection was based on Beneco's low "performance risk" rating as compared to HJ's moderate "performance risk" rating, which the source selection authority found outweighed HJ's price advantage. HJ contends that the Air Force acted improperly in awarding the contract to Beneco, a technically equal but higher priced offeror, based on Beneco's lower assessed performance risk. We agree.

It is fundamental that offerors must be advised of the bases upon which their proposals will be evaluated. Republic Realty Servs., Inc., B-242629, May 7, 1991, 91-1 CPD ¶ 446. In particular, contracting agencies are required by statute to set forth, at a minimum, all significant evaluation "factors (and significant subfactors) . . . (including cost or price, cost- or price-related factors, and noncost- or

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<sup>5</sup>There is no indication that HJ was not regarded as a responsible contractor.

nonprice-related factors)," and their relative importance. 10 U.S.C.A. § 2305(a)(2)(A) (West Supp. 1991). An agency may not give importance to specific criteria beyond that which would reasonably be expected by offerors. Republic Realty Servs., Inc., supra.

Here, although the agency's selection of Beneco was based on Beneco's lower assessed performance risk, the RFP provided only that performance risk would be a "general consideration" in the integrated assessment of the proposals. The RFP did not provide the relative importance of the performance risk assessment (or other general considerations) vis-a-vis the evaluation factors specifically identified, and listed in descending order of importance, in the RFP.<sup>6</sup> Thus, under the RFP this "general consideration" could not be given significant weight in the award selection. See Laser Power Techs., Inc., B-233369; B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267; see also Devres, Inc., 66 Comp. Gen. 121 (1986), 86-2 CPD ¶ 652. Consequently, the agency could not properly make award to Beneco merely because of its lower performance risk, where Beneco's offer, under the solicitation's stated and weighted evaluation criteria, was technically equal to, but higher in price than, HJ's offer. Indeed, given HJ's technically equal "blue" rated proposal, low proposal risk rating, and low price, the record fairly shows that HJ would have been selected for award under the RFP.

If the Air Force believes that past performance as it relates to the probability of successfully performing the contract should be separately evaluated, we recommend that it list and define this element as an evaluation factor for technical proposals, and state the relative weight that the factor will be accorded in the technical evaluation.<sup>7</sup> The agency should then reopen discussions and solicit revised proposals from the competitive range offerors. If, upon review, the agency concludes that past performance was adequately addressed under the company experience technical evaluation factor, so that the RFP reflects the government's actual requirements, it should terminate Beneco's contract and make award to HJ. In addition, HJ is entitled to recover its costs of filing and pursuing its protest,

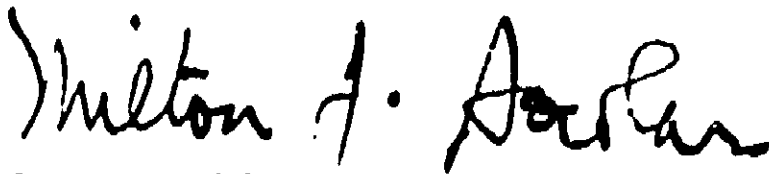
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<sup>6</sup>For an example of a procurement conducted under AFR 70-30 in which the performance risk was assigned a relative weight, see Universal Tech., Inc., B-241157, Jan. 18, 1991, 91-1 CPD ¶ 63.

<sup>7</sup>This determination should include an assessment of the extent to which that factor is already included within the assessment of the company experience technical evaluation factor.

including reasonable attorneys' fees, 4 C.F.R. § 21.6(d)(1) (1991). HJ should submit its certified claim for its protest costs directly to the agency within 60 working days of receipt of this decision. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(f)(1)).

The protest is sustained.

*for*   
Comptroller General  
of the United States